

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

GENENTECH, INC. and CITY OF HOPE,

Plaintiffs,

v.

SAMSUNG BIOEPIS CO., LTD.,

Defendant.

C.A. No. 18-cv-1363-CFC

REDACTED PUBLIC VERSION

**STIPULATION AND [PROPOSED] ORDER OF DISMISSAL
WITH RESPECT TO CERTAIN ASSERTED PATENTS AND CITY OF HOPE**

WHEREAS Defendant Samsung Bioepis Co., Ltd. filed an abbreviated biologics license application seeking FDA approval of SB3 as a trastuzumab biosimilar, which will be marketed under the brand name Ontruzant®;

WHEREAS Plaintiffs Genentech, Inc. and City of Hope filed a First Amended Complaint in this case on January 17, 2019, which asserts infringement of twenty-one patents in connection with Samsung Bioepis seeking FDA approval of SB3 as a trastuzumab biosimilar (D.I. 63);

WHEREAS Samsung Bioepis has answered the First Amended Complaint and asserted counterclaims of non-infringement, invalidity, and/or unenforceability with respect to the twenty-one patents in the First Amended Complaint (D.I. 66);

WHEREAS, on January 14, 2019, Samsung Bioepis filed a letter with the Court stating that [REDACTED]

[REDACTED]
[REDACTED]

WHEREAS Samsung Bioepis represents that it [REDACTED]

[REDACTED] and

WHEREAS U.S. Patent No. 6,407,213 will expire on June 18, 2019, and certain other patents in the First Amended Complaint have expired or will expire on or before June 18, 2019;

NOW THEREFORE, it is hereby stipulated and agreed by the Parties, subject to the approval of the Court, that:

1. All claims for infringement of U.S. Patent Nos. 6,331,415; 7,923,221; 6,407,213; 6,417,335; 9,249,218; and 6,339,142 (the “Dismissed Patents”) (Counts I, II, III, IX, X, and XI of the First Amended Complaint (D.I. 63)) are dismissed without prejudice, and all counterclaims for non-infringement, invalidity, and/or unenforceability of the Dismissed Patents (Counts I, II, III, IV, V, VI, VII, VIII, XIX, XX, XXI, XXII, XXIII and XXIV of Samsung Bioepis’s Counterclaims (D.I. 66)) are dismissed without prejudice;
2. City of Hope is dismissed as a party to this case; and
3. Each party shall bear its own costs, expenses, and attorneys’ fees associated with this action with respect to the Dismissed Patents.

This stipulation is solely for the purpose of limiting the scope of the litigation with respect to patents that have already expired or will expire on or before June 18, 2019. This stipulation [REDACTED]

[REDACTED] This stipulation does not affect the parties’ claims, counterclaims, or defenses with respect to the remaining patents-in-suit.

This stipulation is expressly conditioned on [REDACTED]

[REDACTED] This dismissal is without prejudice to Genentech’s ability to bring a new cause of action with respect to any Dismissed Patent if,

subsequent to this stipulation, [REDACTED]

[REDACTED]

[REDACTED]

/s/ Frederick L. Cottrell, III

Frederick L. Cottrell, III (#2555)
Jason J. Rawnsley (#5379)
Alexandra M. Ewing (#6407)
RICHARDS, LAYTON & FINGER, P.A.
920 North King Street
Wilmington, DE 19801
(302) 651-7700
cottrell@rlf.com
rawnsley@rlf.com
ewing@rlf.com

Of Counsel:

William F. Lee
Lisa J. Pirozzolo
Emily R. Whelan
Kevin S. Prussia
Andrew J. Danford
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6000
william.lee@wilmerhale.com
lisa.pirozzolo@wilmerhale.com
emily.whelan@wilmerhale.com
kevin.prussia@wilmerhale.com
andrew.danford@wilmerhale.com

/s/ David E. Moore

David E. Moore (#3983)
Bindu A. Palapura (#5370)
Stephanie E. O'Byrne (#4446)
Jennifer Penberthy Buckley (#6264)
POTTER ANDERSON CORROON
Hercules Plaza, 6th Floor
1313 N. Market Street
Wilmington, DE 19801
Tel: (302) 984-6000
dmoore@potteranderson.com
bpalapura@potteranderson.com
sobyne@potteranderson.com

OF COUNSEL:

Dimitrios T. Drivas
Scott T. Weingaertner
Amit H. Thakore
Holly Tao
John P. Padro
WHITE & CASE LLP
1221 Avenue of the Americas
New York, New York 10020-1095
Tel: (212) 819-8200

Attorneys for Defendant Samsung Bioepis Co., Ltd.

Robert J. Gunther Jr.
WILMER CUTLER PICKERING
HALE AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
(212) 230-8800
robert.gunther@wilmerhale.com

Daralyn J. Durie
Adam R. Brausa
DURIE TANGRI LLP
217 Leidesdorff St.
San Francisco, CA 94111
(415) 362-6666
ddurie@durietangri.com
abrausa@durietangri.com

*Attorneys for Plaintiffs Genentech, Inc. and
City of Hope*

Dated: April 22, 2019

SO ORDERED this _____ day of _____, 2019.

United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2019, true and correct copies of the foregoing document were caused to be served on the following counsel in the manner indicated:

VIA ELECTRONIC MAIL

David Moore
Bindu Ann Palapura
POTTER ANDERSON CORROON LLP
1313 North Market Street, 6th Floor
Wilmington, Delaware 19801
dmoore@potteranderson.com
bpalapura@potteranderson.com

VIA ELECTRONIC MAIL

Amit Thakore
Dimitrios T. Drivas
Holly Tao
Scott T. Weingaertner
John P. Padro
WHITE & CASE LLP
1221 Avenue of the Americas
New York, New York 10020-1095
athakore@whitecase.com
ddrivas@whitecase.com
holly.tao@whitecase.com
sweingaertner@whitecase.com
jpadro@whitecase.com

/s/ Jason J. Rawnsley

Jason J. Rawnsley (#5379)
rawnsley@rlf.com